

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
BellSouth's Petition for Declaratory Ruling)	
Regarding the Commission's Definition of)	
Interconnected VoIP in 47 C.F.R. § 9.3 and)	
the Prohibition on State Imposition of 911)	
Charges on VoIP Customers in 47 U.S.C. §)	WC Docket No. 19-44
615a-1(f)(1))	
)	
Petition for Declaratory Ruling in Response)	
to Primary Jurisdiction Referral, Autauga)	
County Emergency Management)	
Communications District Et al. v. BellSouth)	
Telecommunications, LLC, No. 2:15-cv-)	
00765-SGC (N.D. Ala))	

COMMENTS OF VERIZON

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COMMENTS OF VERIZON

Telecommunications service providers are facing dozens of lawsuits in several states regarding 911 charges—in particular, how 911 charges should be applied to IP-enabled services such as interconnected VoIP. Only one of these lawsuits is the subject of this primary jurisdiction referral,¹ but its implications are far-reaching and other cases have been stayed pending the Commission's decision here. Absent guidance from the Commission, these lawsuits could result in inconsistent state-by-state and even locality-by-locality application of Congress's and the Commission's approach to regulatory service classification. This development threatens to interject legal uncertainty regarding the regulatory and tax treatment of both interconnected

¹ See Public Notice, WC Docket No. 19-44, DA 19-125 (WCB 2019).

VoIP services and longstanding TDM-based local exchange access business offerings like ISDN PRI. And it could undermine the Commission's nationwide "light-touch" regulatory policy toward IP-enabled services, and complicate the industry's transition to IP-enabled networks.

To counter this threat, the Commission should grant BellSouth's petition for declaratory ruling in its entirety. The Commission's case-by-case and fact-specific approach to classifying a customer's purchased service offering supports BellSouth's requested clarifications. The Part 9 interconnected VoIP definition itself requires last-mile transmission of communications in internet protocol; and a local exchange access provider's unilateral decision to use internet protocol in the last mile, standing alone, does not make its service interconnected VoIP. And BellSouth's request that the Commission preempt discriminatory state and local 911 charges on interconnected VoIP services is based on a straightforward application of the NET 911 Improvement Act of 2008 (the "NET 911 Act") and its legislative history. The Alabama 911 Districts (the "Districts"), in contrast, would have the Commission define VoIP and traditional business services without regard to the service purchased or the capabilities offered. The Districts also ignore Congress's clear intent that the federal Communications Act preempt the discriminatory 911 charges BellSouth describes.

DISCUSSION

I. THE COMMISSION REGULATES A SERVICE OFFERING BASED ON WHAT THE CUSTOMER PURCHASES AND RECEIVES, NOT HOW THE SERVICE PROVIDER INCIDENTALLY CONFIGURES IT.

BellSouth's request squares with the Commission's well-established framework for classifying and regulating individual service offerings. The Districts, though, would have the Commission focus instead on how the service provider configures a single component of this particular business offering, even though that configuration is invisible to the customer and

regardless of the capabilities actually available to the business customer. The Commission should reject their strained interpretation of the statute and the Part 9 rules.

A. The Commission’s Regulation of a Communications Service Is Based on the Actual Service Purchased and Received.

In evaluating how a particular service offering is regulated under the Communications Act of 1934 and its rules, the Commission avoids broad “definitive pronouncements” and instead is “focused on individual service offerings.”² The consistent thread throughout the Commission’s case-by-case precedents though—including for VoIP services—is a focus on the customer is actually buying, as well as “the actual characteristics of the service.”³ This same approach is used to distinguish IP from circuit-switched telephony.⁴

The issue, then, is what business customers actually purchase and receive for each of the different offerings at issue in the Petitions,⁵ based on the four criteria of the Part 9 definition on the one hand,⁶ and the characteristics of an ISDN PRI local exchange access service on the other. BellSouth correctly describes why Scenarios 1 through 4a are not interconnected VoIP. None of Scenarios 1 through 3b involve last mile transmission in internet protocol so, by definition,

² *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 991 (2005); *Stevens Report*, 13 FCC Rcd 11501, 111544 (1998); *IP-in-the-Middle Order*, 19 FCC Rcd 7457, ¶ 10 (2004) (order relates to “AT&T’s specific service”).

³ *Petition for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7, FCC 18-178, ¶ 24 (2018); *Brand X*, 545 U.S. at 991 (classification is based on “the factual particulars of how [a] technology works and how it is provided”).

⁴ *IP in the Middle Order* ¶¶ 12-13 (“End user customers *do not order a different service*, pay different rates or place and receive calls any differently” and the “decision to use its Internet backbone to route certain calls is made internally by AT&T”, emphasis added).

⁵ See Petitioners’ Joint Appendix.

⁶ An interconnected VoIP service: “(1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user’s location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.” 47 C.F.R. § 9.3.

customers of those services do not subscribe to interconnected VoIP. At Scenario 4a, the customer is purchasing a TDM-based local exchange access service and, by virtue of the customer's TDM-based connection to the TDM-PBX, that is the very service the customer receives and uses. The last-mile transmission in IP, and the use and location of the IP-enabled equipment, are incidental to the service and do not affect the service or features available to the customer. At Scenario 4b, where the customer is purchasing an interconnected VoIP service, the customer's ability to use a TDM connection to its PBX is simply a capability supported by the interconnected VoIP service the customer ordered. And Scenarios 5a through 6 are self-evidently interconnected VoIP, as the provider is offering transmission in IP format from the Central Office to the PBX (or the PBX equivalent). While the Districts apparently concede the bottom line conclusions, they do so for the wrong reasons.

B. Whether a Service is Interconnected VoIP Depends on How the Section 9.3 Definition Applies, Not the Common Carrier-Based CPE Definition and Part 68 Terminal Equipment Rules.

The Districts ignore the Commission's precedents (and accompanying jurisprudence) entirely. They focus on a single component of the interconnected VoIP service definition (the requirement for IP-compatible customer premises equipment), graft the common carrier-based definitions of CPE and the unrelated Part 68 terminal equipment rules onto the Part 9 definition, to reach an expansive interpretation of the Part 9 definition that encompasses ISDN PRI local exchange access services. But the statutory definition of interconnected VoIP only cross-references the Part 9 rule and does not use the statutory definition of the term "customer premises equipment" or the term "demarcation point" at all.⁷ How the Commission interprets

⁷ 47 U.S.C. §§ 153(25), 615b(8).

the Part 9 rules, not those legacy wireline precedents, determines whether a service is interconnected VoIP.

As BellSouth also explains, the statutory definition of “customer premises equipment” does not reference the concept of demarcation points at all.⁸ In fact, it relates to equipment “employed on the premises of a person (*other than a [common] carrier*),” and the related term “telecommunications equipment” is defined as equipment “used *by a [common] carrier to provide telecommunications services...*”⁹ But the Commission has not addressed one way or another whether an interconnected VoIP provider provides “telecommunications service” or can be a “common carrier” for this purpose.¹⁰ For these reasons as well, neither those statutory terms, nor common carrier-based “demarcation” rules and precedents derived from them, govern whether a service is interconnected VoIP.

C. BellSouth’s Requested Clarifications Flow from Straightforward Application of the Part 9 Definition to the Services at Issue in the Petition.

The TDM-based ISDN PRI business services at issue in the Petition are not interconnected VoIP. Verizon too offers ISDN PRI services, as a local exchange access service that connects a business customer’s PBX directly to a central office over the industry standard 1.544 Mbps Time Division Multiplex (TDM). Verizon has always treated and offered the service to customers as a circuit-switched TDM-based offering (including subject to tariff when appropriate in a given jurisdiction), and that is how customers use the service. BellSouth would simply have the Commission affirm this long-standing regulatory treatment of these services,

⁸ See BellSouth Petition at 12.

⁹ 47 U.S.C. § 153(11), (16), (52) (emphasis added)).

¹⁰ See *Charter Advanced Svs. (MN), LLC v. Lange*, 903 F.3d 715, 719 n.3 (8th Cir. 2018).

and granting its petition will help provide certainty for service providers offering ISDN PRI services and for the business customers who use them.

1. VoIP Service Offerings necessarily require transmission in IP over last-mile facilities to the end user.

The *VoIP 911 Order* defining “interconnected VoIP service” limited the term to services that are “IP-enabled services” in the first instance.¹¹ IP-enabled services, in turn, are “services and applications *relying on the Internet Protocol family*” and “are typically provided *over* broadband facilities, but could *ride on* narrowband facilities.”¹² It is the service’s transmission of communications in IP, not the particular transmission facilities involved, that makes the offering “IP-enabled.”

In addition, the “last-mile” component of BellSouth’s request is at least implicit in the VoIP definition itself: the “service offering permits users generally to receive calls that *originate on the PSTN and to terminate calls to the PSTN.*”¹³ Insofar as there is any uncertainty, the Commission’s Form 477 reporting requirements for facilities-based local exchange access and interconnected VoIP makes the “last mile” aspect of BellSouth’s request explicit. The Form 477 requires that interconnected VoIP providers report their subscribers to the Commission “*by Last-mile Medium,*” i.e., those subscriptions that “also supply the end user with the high-capacity connection that delivers the interconnected VoIP service ... according to the technology of the

¹¹ See *In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 24 (2005) (“*VoIP 911 Order*”).

¹² *Id.* ¶ 3 n.5 (emphasis added); *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶ 1 nn.1-2 (2004) (“*IP-Enabled Services NPRM*”).

¹³ 47 C.F.R. § 9.3 (emphasis added).

high-capacity connection *that terminates at the end user's premises.*"¹⁴ Relatedly, the Commission directs providers of ISDN PRI services to report channelized last mile circuits in the "Local Exchange Telephone Service" category.¹⁵ BellSouth's petition applies these distinctions consistent with these established Commission standards while the Districts' petition would disrupt them.

2. *Whether a provider decides to transmit service in IP over that last mile facility, and what the provider designates as the "demarcation point," do not convert TDM into interconnected VoIP.*

As BellSouth explains and consistent with the *IP-in-the-Middle Order*, whether the service is VoIP or TDM is based on the service the customer has ordered: the basic call delivery capabilities of TDM, or the more robust capabilities of interconnected VoIP.¹⁶ The Districts, though, would have the Commission focus on how the service provider has opted to physically configure the business customer's selected service offering rather than the capabilities the customer has actually purchased and received. The Part 9 definition requires no such thing.

The interconnected VoIP service definition was adopted "for purposes of the present [VoIP 911] Order," which does not purport to apply to services offered in TDM.¹⁷ And as noted earlier, that definition does not cross-reference the statutory CPE definition or the Part 68 terminal equipment and network demarcation rules, so the Districts may not graft them onto the Part 9 definition to extend it to TDM-based service offerings. And the Commission in the 2015

¹⁴ See FCC Form 477 Instructions, https://transition.fcc.gov/form477/FVS/definitions_fvs.pdf and https://transition.fcc.gov/form477/FVS/formatting_fvs.pdf (implementing 47 C.F.R. § 43.11(a), requiring Form 477 submission "in accordance with [the Form's] instructions", emphasis added).

¹⁵ See *id.* (Form 477 reporting service providers should "[c]ount fully-channelized PRI circuits ... as 23 voice-grade equivalent lines.").

¹⁶ BellSouth Petition at 15-16.

¹⁷ 47 C.F.R. § 9.3; *VoIP 911 Order* ¶ 24.

Open Internet Order declined to apply the Part 68 rules to equipment used for broadband internet access services.¹⁸ Now that the Commission has since repealed most of the *Open Internet Order* rules,¹⁹ it would make no sense to now rely on the legacy wireline Part 68 rules to assess VoIP services that use the same equipment and networks. For that reason also, those rules and precedents are irrelevant to determining whether a service is interconnected VoIP.

The Districts’ reliance on AT&T’s, Verizon’s and others’ advocacy in the Eighth Circuit’s *Charter* proceeding is a red herring. That decision related to whether Charter’s residential interconnected VoIP service is an information service under the Communications Act, and the “demarcation point” was incidentally used to describe how a net protocol conversion occurred between physical networks.²⁰ Charter’s discussion of the “demarcation point” involved the physical description of “where Charter’s network beings” to illustrate how Charter offered the capability of a net protocol conversion.²¹ And the question of whether the eMTA used for Charter’s service was IP-enabled CPE under the Part 9 interconnected VoIP definition was correctly decided—again, with respect to *Charter*’s own network and residential service offering.²²

¹⁸ See *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 527 (2015).

¹⁹ See *In the Matter of Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, ¶¶ 219-220 (2018).

²⁰ See *Charter Advanced Svs. (MN), LLC v. Lange*, No. 17-2290, Brief of Plaintiffs-Appellees, at 32-33 (8th Cir. Oct. 19, 2017) (“Charter Brief”); *id.*, Brief of USTelecom et al., at 13-14 (8th Cir. Oct. 30, 2017).

²¹ See Charter Brief at 32-33.

²² See *id.* at 34.

II. THE NET 911 ACT OF 2008 PREEMPTS 911 CHARGES THAT IMPOSE DISCRIMINATORY BURDENS ON INTERCONNECTED VOIP SERVICES.

BellSouth's straightforward interpretation of § 615a-1(f)(1), enacted as part of the NET 911 Act, is consistent with the text of the statute and Congress's overarching objectives.²³ The NET 911 Act includes several provisions that impose equitable and competitively neutral requirements as between VoIP and non-VoIP service providers. These include: connectivity rights for VoIP providers vis-à-vis LECs;²⁴ liability protection for VoIP providers vis-à-vis LECs and wireless providers;²⁵ technology-neutral Commission regulation;²⁶ and the treatment of state and local 911 charges at issue here.²⁷ The Districts' statutory interpretation is suspect for this reason alone, given Congress's overarching objective of minimizing, not exacerbating, any disparate federal and state regulatory treatment of interconnected VoIP.

The NET 911 Act, though, addresses this issue directly. Consistent with Congress's overarching objectives, and as BellSouth explains, a 911 charge's "amount" is broader than just its "rate," simply under a plain, dictionary-based reading of the terms.²⁸ In addition, the NET 911 Act itself uses the term "rates" elsewhere in the same statute, and where Congress uses different terms in the same legislation, it is assumed to do so intentionally.²⁹ And its legislative history further supports BellSouth's interpretation. The Committee Report explains that "if a

²³ See NET 911 Improvement Act of 2008, 122 Stat. 2620, 2621-22, Pub.L. 110-283 (2008).

²⁴ 47 U.S.C. § 615a-1(b).

²⁵ *Id.* § 615a(a).

²⁶ *Id.* § 615a-1(e)(1).

²⁷ *Id.* § 615a-1(f)(1).

²⁸ See BellSouth Petition at 17-18.

²⁹ See §§ 615a-1(b), (c)(1)(C); *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1240 (D.C. Cir. 2007).

State or its political subdivision imposes a 911 fee on wireless or wireline carriers that consists of one rate for residential customers and another rate for business customers, [they] may *collect* no more from VoIP providers for the same classes of customers.”³⁰ Thus, consistent with BellSouth’s interpretation, states and localities must “collect” the same amount from the same class of VoIP and non-VoIP customers when providing the same basic calling capabilities. To expand on BellSouth’s example, if a state may “collect” \$116.84 from a customer buying a PRI, then a customer buying VoIP service with the same calling capacity should owe (and the state may “collect”) no more than \$116.84.³¹

Finally, BellSouth’s interpretation dovetails with Congress’s objective of preserving states’ and localities’ authority to apply 911 charges “*for the support or implementation of 911 or E-911 services,*” and to ensure the charges are “obligated or expended *only* in support of 9–1–1 and enhanced 9–1–1 services.”³² It is the PRI service users’ ability to call the PSTN and dial 911 that incurs expectations and costs for PSAPs and other emergency services and triggers a state’s need to “support” its 911 system through those fees. Assignment of a telephone number to a customer without the accompanying calling capability does not enable a VoIP user’s 911 access, so imposing charges on a per-number basis alone is not “for the support of” critical public safety objectives. Finally, it is difficult to reconcile Congress’s statutory objective with the diversion of up to 40 percent of any additional 911 funds to a tax bounty hunter instead of the Districts’ actual 911 and E911 needs.

³⁰ See Committee on Energy and Commerce, *911 Modernization and Public Safety Act of 2007*, Rep. No. 110-442, at 15 (2007).

³¹ BellSouth Petition at 24.

³² 47 U.S.C. § 615a-1(f)(1) (emphasis added).

CONCLUSION

For the foregoing reasons, grant of BellSouth's petition for declaratory ruling will help ensure that the Commission's rules and policies on the regulatory treatment of local exchange access and interconnected VoIP services are applied consistently nationwide, and provide legal certainty for providers of VoIP and non-VoIP services alike at the Commission, state regulatory commissions and the courts. And it will enable service providers to continue to seamlessly upgrade their underlying network facilities without affecting the nature of the service to which the business customer subscribes—thus promoting the transition of the circuit-switched network to IP while minimizing disruption to consumers.

Respectfully submitted,

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